

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

INNOVATION VENTURES, LLC
d/b/a LIVING ESSENTIALS,

Plaintiff,

v.

N.V.E., INC.,

Defendant.

CIVIL ACTION NO. 08-11867

DISTRICT JUDGE LAWRENCE P. ZATKOFF

MAGISTRATE JUDGE DONALD A. SCHEER

**ORDER DENYING PLAINTIFF'S MOTION
FOR RECONSIDERATION OF COURT'S ORDER
GRANTING IN PART AND DENYING IN PART
NVE'S MOTION TO COMPEL**

This matter is before the magistrate judge on Plaintiff's Motion for Reconsideration of Court's Order Granting in Part and Denying in Part NVE's Motion to Compel. I have reviewed the Motion, together with NVE's Response and Plaintiff's Reply. I am satisfied that oral argument will not materially assist in the determination of the Motion.

Based upon the matters presented in the papers and arguments relating to NVE's Motion to Compel Production of Documents Pursuant to Fed.R.Civ.P. 37 and 45 (Docket No. 175), the court has concluded that Plaintiff has been less than candid in its responses to Defendant's discovery efforts. Defendant's Document Request No. 47 sought all transcripts of depositions of current or former employees, independent contractors, or expert witnesses of Innovation Ventures in the course of seven specified lawsuits. Plaintiff produced redacted copies of certain testimony by its founder, Manoj Bhargava, but objected to the production of other requested testimony on relevance and overbreadth grounds. The arguments in support of Defendant's Motion to Compel convinced the court

that portions of the withheld testimony bore directly upon issues contested in this case, including the ownership of the trademark in controversy and the descriptive nature of the term "five hour energy." Those issues have been specifically raised by Defendant in this action. My Order of January 28, 2010 was based upon the conclusion that Plaintiff had withheld relevant and material evidence to which Defendant is entitled. I am persuaded that principal agents of the Plaintiff have offered sworn testimony in contradiction of the Plaintiff's factual position in this case, and that Plaintiff has purposefully concealed that evidence.

I find no cause for reconsideration of my Order of January 28, 2010. IT IS THEREFORE ORDERED that Plaintiff's Motion for Reconsideration of Court's Order Granting in Part and Denying in Part NVE's Motion to Compel is in all respects denied.

s/Donald A. Scheer
DONALD A. SCHEER
UNITED STATES MAGISTRATE JUDGE

DATED: March 4, 2010

CERTIFICATE OF SERVICE

I hereby certify on March 4, 2010 that I electronically filed the foregoing paper with the Clerk of the Court sending notification of such filing to all counsel registered electronically. I hereby certify that a copy of this paper was mailed to the following non-registered ECF participants on March 4, 2010: **None.**

s/Michael E. Lang
Deputy Clerk to
Magistrate Judge Donald A. Scheer
(313) 234-5217